

REMARKS/ARGUMENTS

Claims 53-70 are active. Claim 53 finds support in original claims 1-13. The tripolyphosphates recited by these claims are disclosed at [0033] on page 9 of the specification and also in original claims 8-10. Page 10, line 4 discloses the solubilizer content of 35-300 wt.%. Claims 53-56 also find support in Examples 5-10 and 12-26 which disclose use of tripolyphosphates. The range "0.5 to 25 wt.% of cinnamic acid" finds support on page 10, line 12 of the specification.

Support for method claim 57 is found in original claim 16 and prior claim 43. The lower limit of 0.01 wt.% on cinnamic acid concentration in claim 57 finds support on page 10, lines 15-17 where the 1,000-fold dilution of a 10 wt.% solution is disclosed. The upper limit on cinnamic acid concentration in claim 57 of 0.5 wt.% corresponds to a practical limit of the solubility of cinnamic acid. The method of claim 57 does not require a tripolyphosphate since the cinnamic acid is applied at a concentration of 0.01 to 0.5 wt.% (*cf.* the maximum solubility of cinnamic acid is 0.546 g/L is disclosed on page 9, line 5 of the specification). Soil application and its advantages are disclosed on page 4, lines 23-24 and page 4, line 35-page 5, line 4 and also in Examples 5-26. Claim 61 finds support on page 4, lines 15-18 of the specification; support for claim 62 may be found in Examples 3-25 and for claim 63 in Examples 1 and 2. Claims 64-70 track prior claims 57-63 except that they include as a first step, the dilution of the solution of claim 53, that is, the dilution of a high-concentration aqueous solution of cinnamic acid. Support for such dilution may be found in the specification on page 6, lines 19-21, page 10, lines 13-17, and in Example 5 on page 16, lines 1-4. Accordingly, the Applicants do not believe that any new matter has been added.

Restriction/Election

The Applicants previously elected with traverse Group I, Claims 1-13, directed to a cinnamic acid containing product (plant growth regulator). At least new Claims 53-56 are directed to such products. The claims of Groups II-IV which are respectively directed to a method of making (II) and method of use (III) for the plant growth regulator, as well as dwarfing plant (IV) have been withdrawn from consideration. Upon an indication of allowability for a claim in the elected Group I, the Applicants respectfully request rejoinder and allowance of non-elected claims which depend from, or otherwise incorporate the limitations of an allowable claim in the elected Group I.

Rejection—35 U.S.C. §112, first paragraph

Claims 18, 23-40, 47, and 51-52 were rejected under 35 U.S.C. 112, first paragraph, as introducing new matter by depicting the structure of cinnamic acid in the claims. The structure of cinnamic acid was well-known as of the filing date of this application as shown by the previously attached Merck Index entry for “cinnamic acid”. “What is conventional or well-known to one of ordinary skill in the art need not be disclosed in detail”, MPEP 2163 (page 2100-173, 2nd col., first full paragraph, Rev. 5, Aug. 2006). Under U.S. practice, a claim term need not be literally described in the specification.

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, **rather than the presence or absence of literal support** in the specification for the claim language (emphasis added)”, In re Kaslow, 217 USPQ 1089 (Fed. Cir. 1983).

Accordingly, this rejection should now be withdrawn.

Rejection—35 U.S.C. §112, second paragraph

Claim 51 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

This issue is moot in view of the cancellation of this claim.

Rejection—35 U.S.C. §102

Claims 18, 23-26, 28 and 47 were rejected under 35 U.S.C. 102(b) as being anticipated by Ferguson et al., U.S. Patent No. 3,157,964. This rejection is moot in view of the cancellation of these claims. It would not apply to new independent claim 53, because Ferguson does not disclose an aqueous solution containing 0.5 to 25 wt.% of cinnamic acid and 35 to 300 wt.% of a tripolyphosphate. Accordingly, this rejection may now be withdrawn.

Rejection—35 U.S.C. §103

Claim 27 was rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson et al., U.S. Patent No. 3,157,964, in view of Pierzynski et al. This rejection is moot in view of the cancellation of claim 27. It would not apply to the new claims for the reasons discussed above.

Rejection—35 U.S.C. §103

Claims 29-32 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson et al., U.S. Patent No. 3,157,964, in view of Obrero et al. This rejection is moot in view of the cancellation of these claims. It would not apply to the new claims for the reasons discussed above.

Rejection—35 U.S.C. §103

Claims 33-40, 51 and 52 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson et al., U.S. Patent No. 3,157,964. This rejection is moot in view of the cancellation of these claims. It would not apply to the new claims for the reasons discussed above. Page 6, lines 10-11 of the Official Action indicates that Ferguson does not disclose an aqueous solution containing 0.5 to 25 wt.% of cinnamic acid and 35 to 300 wt.% of an alkali metal tripolyphosphate. Thus, Ferguson does not disclose all the elements of the invention and thus cannot anticipate it.

Moreover, the inventors have discovered that use of a tripolyphosphate, especially sodium tripolyphosphate, as a solubilizer surprisingly provides significant advantageous effects as shown by Examples 5-10 and 12-26 of the specification. Furthermore, Ferguson provides no suggestion or reasonable expectation of success for the claimed methods since it does not disclose application of cinnamic acid *per se* to soil.

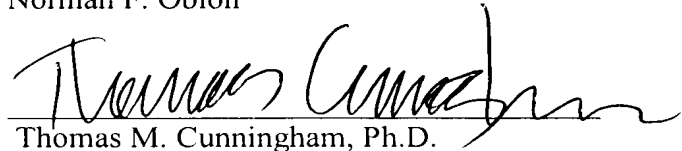
Even if the addition polymer product of Ferguson were construed to read on the cinnamic acid required by the method claims, Ferguson teaches away from the claimed methods since it indicates that “it is preferable that compositions having these relatively small portions of humectants **not** to be used to treat the **bare roots** of dormant plants (emphasis added)”. Accordingly, this rejection would not apply to the present claims.

CONCLUSION

In view of the above amendments and remarks, the Applicants submit that this application is now in condition for allowance. Early notification to that effect is earnestly solicited.

Respectfully submitted,

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